

MONTANA LEGISLATIVE HISTORY

Chapter 411 1983

Bill H _____ S 394

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) h 3/16 _____ c

v 3/21 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) h 2/15 _____ c

v 2/15 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 04/14/83
SIGNED: 04/19/83, CHAPTER 581

SB 392 -- ELLIOTT, GAGE -- TO GENERALLY REVISE AND CLARIFY THE LICENSING LAWS FOR
CERTIFIED PUBLIC ACCOUNTANTS
BY REQUEST OF: THE BOARD OF PUBLIC ACCOUNTANTS

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/10/83
HEARING: 2/14/83
REPORT: 2/15/83, DO PASS, AS AMENDED
2ND READING: 02/17/83 AYES: 43; NAYS: 1
3RD READING: 02/19/83 AYES: 46; NAYS: 1

TRANSMITTED TO HOUSE: 02/19/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/28/83
HEARING: 3/10/83
REPORT: 03/11/83, BE CONCURRED IN
2ND READING: 03/19/83, BE CONCURRED IN AYES: 77; NAYS: 4
3RD READING: 03/21/83, BE CONCURRED IN AYES: 91; NAYS: 5

RETURNED TO SENATE: 3/21/83

TRANSMITTED TO GOVERNOR: 03/28/83
SIGNED: 4/2/83, CHAPTER 335

SB 393 -- DANIELS -- PROVIDING FOR THE MANDATORY EXECUTION OF HABITUAL CRIMINALS.

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/10/83
HEARING: 2/17/83
DIED IN COMMITTEE

SB 394 -- BOB BROWN, HALLIGAN, FULLER, ET AL. -- ALLOWING A DEFENDANT SENTENCED TO
DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/10/83
HEARING: 2/15/83
REPORT: 2/16/83, DO PASS, AS AMENDED
2ND READING: 02/19/83 AYES: 34; NAYS: 6
3RD READING: 02/22/83 AYES: 39; NAYS: 9

TRANSMITTED TO HOUSE: 02/22/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/28/83
HEARING: 3/16/83
REPORT: 03/21/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/22/83, BE CONCURRED IN AYES: 68; NAYS: 5
3RD READING: 03/23/83, BE CONCURRED IN AYES: 81; NAYS: 12

RETURNED TO SENATE WITH AMENDMENTS: 3/24/83
2ND READING: 03/30/83 AYES: 32; NAYS: 9
3RD READING: 03/31/83 AYES: 43; NAYS: 6

TRANSMITTED TO GOVERNOR: 04/06/83
SIGNED: 4/9/83, CHAPTER 411

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER, CHRISTIAENS,
BERG, TURNAGE, CRIPPEN, MAZUREK, CURTISS, KEMMIS,
KEYSER, RAMIREZ, D. BROWN

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Judiciary.
February 14, 1983	Fiscal note requested.
February 16, 1983	Fiscal note returned.
	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Ayes, 39; Noes, 9. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Judiciary.
March 21, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 23, 1983	Third reading, concurred in.

IN THE SENATE

March 24, 1983

Returned to Senate with
amendments.

March 30, 1983

Second reading, amendments
concurred in.

March 31, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *394*
 2 INTRODUCED BY *Bob Prosser, William Fuller, Christopher*
 3 *Berg, Lurwayne, Dennis, Ramon, Curtiss, One Brain*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT
 5 SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL
 6 INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON
 7 SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT
 8 THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE
 9 EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE
 10 EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING
 11 SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202,
 12 AND 46-19-204, MCA."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 37-3-103, MCA, is amended to read:

16 "37-3-103. Exemptions from licensing requirements. (1)
 17 This chapter does not prohibit or require a license with
 18 respect to any of the following acts:

19 (a) the gratuitous rendering of services in cases of
 20 emergency or catastrophe;

21 (b) the rendering of services in this state by a
 22 physician lawfully practicing medicine in another state or
 23 territory. However, if the physician does not limit the
 24 services to an occasional case or if he has any established
 25 or regularly used hospital connections in this state or

1 maintains or is provided with, for his regular use, an
 2 office or other place for rendering the services, he must
 3 possess a license to practice medicine in this state.

4 (c) the practice of dentistry under the conditions and
 5 limitations defined by the laws of this state;

6 (d) the practice of podiatry under the conditions and
 7 limitations defined by the laws of this state;

8 (e) the practice of optometry under the conditions and
 9 limitations defined by the laws of this state;

10 (f) the practice of osteopathy under the conditions
 11 and limitations defined in chapter 5 of this title for those
 12 doctors of osteopathy who do not receive a physician's
 13 certificate under this chapter;

14 (g) the practice of chiropractic under the conditions
 15 and limitations defined by the laws of this state;

16 (h) the practice of Christian Science, with or without
 17 compensation, and ritual circumcisions by rabbis;

18 (i) the performance by commissioned medical officers
 19 of the armed forces of the United States, of the United
 20 States public health service, or of the United States
 21 veterans' administration of their lawful duties in this
 22 state as officers;

23 (j) the rendering of nursing services by registered or
 24 other nurses in the lawful discharge of their duties as
 25 nurses or of midwife services by registered nurse-midwives

under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20; and

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

~~(2) the execution of a death sentence pursuant to 46-19-103.~~

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their

respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions -- limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself

out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; and

~~(i) the execution of a death sentence pursuant to 46-19-103.~~

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Section 3. Section 45-3-109, MCA, is amended to read:

"45-3-109. Execution of death sentence. A public

~~servant--who-in-the-exercise-of-his-official-duty~~ person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence."

Section 4. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead ~~or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that defendant is dead according to accepted standards of medical practice.~~

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place. The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution nor can any person under age be allowed to witness the same. An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person

administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(5) After the execution, the sheriff must warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

(6) A pharmacist may dispense to the warden or his designee, without prescription, such drugs as are needed to carry out an execution by lethal injection."

Section 5. Section 46-19-202, MCA, is amended to read: "46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon

1 application of the superintendent of Warm Springs state
2 hospital, the county prosecuting officer, or the defendant
3 or his legal representative, determines after a hearing, if
4 a hearing is requested, that the defendant has regained
5 fitness to proceed, the ~~sheriff--shall~~ warden must be
6 directed by the court to carry out the execution. If,
7 however, the court is of the view that so much time has
8 elapsed since the commitment of the defendant that it would
9 be unjust to proceed with execution of the sentence, the
10 court may suspend the execution of the sentence and may
11 order the defendant to be discharged."

12 Section 6. Section 46-19-204, MCA, is amended to read:

13 "46-19-204. Proceedings following determination
14 regarding pregnancy. If it is found by the inquiry that the
15 woman is not pregnant, the ~~sheriff--must~~ warden of the
16 Montana state prison shall execute the judgment. If it is
17 found that the woman is pregnant, the ~~sheriff--must~~ warden
18 shall suspend the execution of judgment and transmit the
19 inquisition to the governor. When the governor is satisfied
20 that the woman is no longer pregnant, he may issue his
21 warrant appointing a day for the execution of the judgment."

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 394 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 394 allows a defendant sentenced to death to choose between hanging and a lethal injection; provides that the warden of the State Prison shall provide the place, person and implements to carry out the execution; changes the list of persons viewing the execution; and exempts persons actually performing the execution from professional licensing requirements.

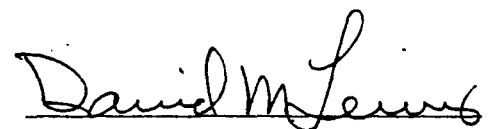
ASSUMPTIONS:

- 1) There have been no executions in the state since mid 1940's and the assumption is there will be none in the 1984-1985 biennium. There are currently three inmates on death row.

FISCAL IMPACT:

There will be no fiscal impact until an inmate on death row has exhausted all legal possibilities of staying his execution. When this does occur, there will be the cost of equipment, providing the room set aside for the execution, cost of witnesses, physician to certify death, and the burial.

FISCAL NOTE 13:S/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-83

48th

LEGISLATIVE SESSION

COMMITTEE ON SENATE JUDICIARY

<u>SENATE</u> BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
261	2-10-83	2-14-83	TABLED						
391	2-10-83	2-14-83	2-15-83			2-15-83			
393	2-10-83	2-18-83	TABLED						
394	2-10-83	2-15-83	2-15-83			2-15-83			
409	2-14-83	2-17-83	2-17-83			2-17-83			
424	2-15-83	2-18-83	TABLED						
427	2-15-83	2-18-83	TABLED						
433	2-16-83	2-18-83	TABLED						
440	2-16-83	2-18-83	TABLED						
464	2-18-83	2-18-83	TABLED						
465	4-14-83	4-15-83		4-15-83					

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 15, 1983

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 15, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 394: Senator Brown, principle sponsor of the bill, advised that SB394 would allow a person under the death sentence to have a choice between hanging or a lethal injection. Hanging has been abandoned by other states as it can be considered a cruel and unusual punishment when a person is not hung correctly. A person hung incorrectly can strangle for up to 20 minutes before dieing. Also, under current law, the sheriff of the county in which the defendant was convicted must perform the execution. SB394 would give the authority for execution to the warden of the state prison.

PROPONENTS: John Maynard, Assistant Attorney General, distributed his written testimony and a proposed amendment (Exhibit "A"). He stated that the bill and proposed amendments would provide an alternative method of execution, change the place of execution to the state prison and provide for retroactive application of law and an immediate effective date. John Maynard felt that the risk in transporting prisoners to the county where the execution takes place and the legal issue of cruel and unusual punishment were two good reasons to consider the passing of this bill. He then addressed the common objections to SB394 but didn't feel the objections outweighed the reasons for passing.

OPPONENTS: Curt Chisholm, Deputy Director of the Department of Institutions, opposed the bill as it would be the responsibility of the Department to carry out the sentence. He acknowledged that Montana State Prison is the logical place for execution, but could see a possibility of problems with the other prisoners. Rather than giving the warden the authority to delegate the task of execution, Mr. Chisholm felt this responsibility should be delegated to a specific person. He also expressed concern for the involvement of a licensed practitioner in this practice as their first obligation is to preserve life.

Senator Brown closed by stating all other states provide that executions take place at the penitentiary. He also felt the identity of the executioner should be kept confidential.

CONSIDERATION OF SENATE BILL 388: Senator Blaylock, sponsor, advised that this bill would set up procedures by which the Judicial Standards Commission investigates complaints. Upon their own motion, or a written complaint, the Judicial Standards Commission could instigate an investigation. SB388 provides the Commission with a method of operation and requires them to obtain a verified written complaint and to inform the judicial officer who is to be investigated of what the charges are against him. Senator Blaylock stressed that the rights of the person to be investigated must be protected. The Commission could not take any action against the official, but would investigate and refer their investigation to the Supreme Court if warranted. This procedure would give the people of the state some small way to voice their complaints.

There being no proponents or opponents present, the hearing was opened to questions from the Committee.

The Committee was specifically concerned with confidentiality prior to a hearing. Senator Blaylock advised that no investigation would become public information until the Supreme Court makes a disposition.

The use of a verified complaint was discussed and Senator Blaylock explained the need for this. The Committee was concerned that the Commission could instigate an investigation upon its own motion. It was suggested that there should be some threshold requirement for the commission to act on its own motion.

There being no further discussion by the Committee, the hearing was closed.

CONSIDERATION OF SENATE BILL 386: Senator Halligan, sponsor, advised that this bill deals with contempt of court. It's purpose is to expand the kinds of contemptuous conduct by a litigant or his attorney.

PROPOSERS: Judge Jim Wheelis, District Judge of the 4th Judicial District, supported the bill. He advised that it is aimed more at a litigant rather than his attorney. It is his opinion that in the "presence of court" should be expanded to include different forms of communication and a variety of places. He also sees a need for a stiffer fine and/or imprisonment of persistent offenders.

There being no further proponents, no opponents, and no questions from the Committee, the hearing was closed.

CONSIDERATION OF SENATE BILL 388: Senator Daniels, sponsor, advised that his witness was not available to testify at the hearing scheduled for this date and asked that the hearing be rescheduled. The Committee acknowledged this request.

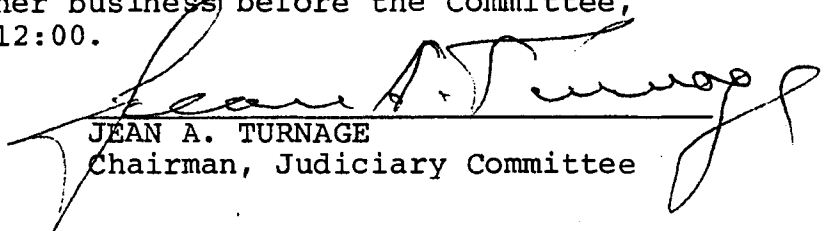
section 9 through 20 in their entirety. He also moved to provide for an immediate effective date and to reflect all these changes in the title accordingly. This motion passed unanimously. Senator Brown then moved SB391 DO PASS AS AMENDED. This motion also passed unanimously.

The Committee agreed that all future amendments to bills should reflect these changes in the title automatically.

FURTHER CONSIDERATION OF SENATE BILL 388: SB388 was referred to counsel for amending to delete the commission's authority to act upon its own motion.

ACTION ON SENATE BILL 394: The Committee felt that appeals on the basis of cruel and unusual punishment would be eliminated by the enactment of this bill. Senator Brown stated that John Maynard's suggestion to amend SB394 to become retroactive was advisable. He then moved to amend the bill to provide for a retroactive effective date. This motion passed unanimously. Senator Brown further moved that SB394 DO PASS AS AMENDED. This motion also passed unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:00.


JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 2-15-83

[illegible]

SENATE Judiciary COMMITTEE

BILL SB386, 388, 393 & 394 VISITORS' REGISTER

DATE 2-15-83

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE Bill No. 394

TESTIMONY OF

JOHN H. MAYNARD

ASSISTANT ATTORNEY GENERAL

I. SB 394, with the attached amendments would do three things:

A. Provide an alternative method of execution, lethal injection, at the election of the defendant.

B. Change the place of execution from the county in which the defendant was convicted to the state prison.

C. With the suggested amendments, provide for retroactive application and an immediate effective date.

II. Source of SB 394 provisions

1977 Oklahoma

Texas

New Mexico

Idaho

Washington

hanging or lethal injection
sodium thiopental

"A"
2-15-83

(2)

Massachusetts - electrocution or lethal injection
Utah - pending

Hanging -

Delaware

Montana

Washington - alternative

III. Reasons to pass SB 394

A. Legal issue - cruel and unusual punishment
State v. Frampton, Wash., 627 P.2d 922 (1981).

B. Security

1. risks in transporting
2. local facility security

C. Removes political exploitation

IV. Common Objections - on balance don't outweigh reasons to pass.

A. Place - Jail

county in which crime was committed.

county where trial took place - all have had venue changed.

B. Place - Prison - security

prison personnel - anonymity

most secure re: access etc.

"A"
7-15-83

3

C. raise ex post facto issue

1. alternative
2. Ex parte Granviel, 561 S.W.2d 503 (1978)
3. Roberts v. Florida, 432 U.S. 282 (1977)

D. lethal injection and physician's oath

1. others are qualified
 - a. medics
 - b. emergency medical technicians
 - c. California paramedics
 - d. trained persons
2. Compare with experienced hangmen

IV. Conclusion

"A"
2-15-83

SUGGESTED AMENDMENTS TO SB 394

1. Page 1, line 9 strike "AND"
2. Page 1, line 10 following "REQUIREMENTS;" insert
"PROVIDING FOR APPLICATION TO DEATH SENTENCES
IMPOSED BEFORE AND AFTER ITS EFFECTIVE DATE; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE;"
3. Page 6, line 23 following "that" insert "the"
4. Page 9, line 22, insert new section 7:

Section 7. Applicability. This act applies to the
execution of death sentences whether first
pronounced before or after its effective date. The
legislature intends this act to apply retroactively
under 1-2-109.
5. Insert new section 8:

Section 8. Effective date. This act is effective
upon passage and approval.

"A"
2-15-83

1. Petitioner's sentences of death by hanging were imposed in violation of his rights under the Eighth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Montana, to be free from cruel and unusual punishments, because hanging is a cruel and torturous method of execution.

Facts Supporting The Claim That Execution By Hanging Is
Cruel And Unusual Punishment.

i. Only Montana, Washington, and Delaware retain hanging as the method of execution. Hanging has been rejected as a method of execution in every other American jurisdiction, and in all European jurisdictions, because it is excessively and unnecessarily cruel.

ii. Persons executed by hanging die slowly, usually by strangulation, and suffer extreme pain in excess of that inherent in the mere extinguishment of life.

iii. No experienced or competent hangman is available in the State of Montana, or anywhere in the United States, to competently administer an execution by hanging. Lacking competent administration, executions by hanging often fail to end life even in the prolonged period ordinarily required, and result in extreme torture, prolonged suffering, and often in the mutilation of the body of the person executed.

iv. No valid state interest is served by the excessive pain and torture involved in execution by hanging.

NAME: John H. Maynard DATE: 2/15/02

PHONE: 449-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: STB 394

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

February 15, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 394

Brown

Respectfully report as follows: That Senate Bill No. 394

introduced bill, be amended as follows:

1. Title, line 9.
Strike: "AND"
2. Title, line 12.
Following: "MCA"
Insert: "; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED
BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE"
3. Page 6, line 23.
Following: "that"
Insert: "the"

Continued on Page 2

And, as so amended,

DO PASS

February 15, 1983

4. Page 9.

Following: line 21.

Insert: "NEW SECTION. Section 7. Applicability. This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109.

NEW SECTION. Section 8. Effective date. This act is effective upon passage and approval."

And, as amended,

DO PASS

STATUS SHEET

HOUSE JUDICIARY COMMITTEE

48TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 394	Allowing a defendant sentenced to death to choose between hanging and a lethal injection, etc.	2/28/83	Sen. B. Brown	3/16/83	Be Concurred In As Amended	3/21/83
SB 409	Clarifying the law regarding the revocation of a deferred or suspended sentence requiring that a petition to revoke sentence	2/28/83	Sen. Berg	3/10/83	Be Concurred In	3/10/83
SB 465	Revises limits of recovery in tort suits against the state and local governments;	4/18/83	Sen. Turnage	4/19/83	Be Concurred In, As Amended	4/19/83

MINUTES OF JUDICIARY COMMITTEE
March 16, 1983

The meeting of the House Judiciary Committee was called to order in room 224A of the capitol building, Helena, Montana by Chairman Dave Brown. All members were present, including Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 394

SENATOR BOB BROWN, District 10, stated that this bill allows a person sentenced to death to choose between hanging and a lethal injection; Montana is one of the four jurisdictions in the English-speaking world that still hangs its condemned prisoners; this bill also requires that the execution take place in the penitentiary rather than under the jurisdiction of the county sheriff in the county where the crime was committed; and he stated that it had some retroactive provisions amended in, so that it would apply to those who are sentenced to death at this time.

CHRIS TWEETEN, Assistant Attorney General, said that he was appearing on behalf of JOHN MAYNARD, who prepared written testimony, which was presented to the committee. See EXHIBIT A.

There were no further proponents and no opponents.

CURT CHISHOLM, Deputy Director of the Department of Institutions, said that this bill affects them directly in terms of being ultimately responsible for the execution of inmates; plus it changes the method of execution; it changes the designation of place of execution from the county in which the trial was heard; it changes the person responsible for supervising the execution from the sheriff of the county of conviction to the warden of the Montana State Prison; and it allows the warden to designate an official executioner. He indicated that the position of the department is that they support the method of execution proposed in this bill; but, because it is a burdensome responsibility, they would just as soon avoid the warden being responsible for the supervision of the execution; and in relation to the place of execution, he felt it made sense to have a centralized place or facility to accommodate the execution itself, especially if they are considering an execution by a chemical substance.

(

Judiciary Committee
March 16, 1983
Page Two

He continued that they do support the ability of the warden to designate and select an executioner - the one who would actually perform the act itself.

SENATOR BROWN said that every state in the nation, with the exception of Montana, does have the warden of the state prison carry out this task, if it has the right of capital punishment; and they do not expect this burden to be placed at the county level.

REPRESENTATIVE JAN BROWN wondered why on page 8, line 9, there had to be twelve witnesses. SENATOR BROWN replied that he did not know why, but they probably had to have some witnesses.

REPRESENTATIVE JAN BROWN asked if it would be difficult to find somebody or to train somebody to administer the injection and wondered if they have a problem with this in other states. MR. TWEETEN responded that there are people who are medically trained, but who are not physicians, who have the expertise that is required to perform this service and that registered nurses can administer continuous intravenous injections along with medical technicians, paramedics; and persons who have received medical training in the service are most commonly the ones who perform this type of service.

SENATOR BROWN commented that he could answer this no better, because their experience with death by lethal injection is extremely limited, but he would rather have a paramedic, a registered nurse or someone like that give a lethal injection, than have the county sheriff try to execute the person by hanging.

REPRESENTATIVE CURTISS asked if they know how many executions have taken place recently. SENATOR BROWN responded there was an execution in Texas just recently and several states have opted for the lethal injection and the state of Washington has already done what this bill proposes.

There were no further questions and the hearing on this bill was closed.

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REPRESENTATIVE CURTISS asked if it was his considered opinion that a person's constitutional and substantial rights would still be protected under this bill. MR. RACICOT replied yes.

CHAIRMAN BROWN indicated that he was always mindful, when he went to the doctor, that half of them graduated in the bottom half of their class, and he viewed lawyers in the same light. He wondered, in the discussions that led to this bill, if there was concern about competency of counsel and what that would do to the rights of the defendant. SENATOR AKLESTAD replied that it was brought up during the interim by some of the individuals; he felt that they have taken care of all the aspects that they possibly could; and that the individual is being protected as much as possible and still have a bill. He emphasized that he hoped they did not get hung up on technicalities, when the vast majority of the people in the state of Montana are concerned and feel that something has to be done.

There were no further questions and the hearing on this bill was closed.

SENATOR AKLESTAD indicated that REPRESENTATIVE KEYSER would carry the bill on the floor of the House.

EXECUTIVE SESSION

SENATE BILL 7

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion. The motion carried with all voting aye.

The committee took a break at 10:25 a.m. and reconvened at 10:45 a.m.

SENATE BILL 394

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE CURTISS seconded the motion.

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REPRESENTATIVE BERGENE stated that she both supports the bill and opposes it; the thing that bothers her is the responsibility they are placing on the warden to make that decision; he will have to supervise that whole thing; she talked with Mr. Chisholm and he asserted that this would make a terrible difference as far as the attitude of the inmates to the warden and she felt that one of the protections to the warden is the way the inmates view that warden.

REPRESENTATIVE JENSEN informed the committee that in Billings, they have put together a gallow that is available for use around the state and he sure hates to interfere in free enterprise by having this bill and he indicated that they could vote how they want to, but he is going with the marketplace.

REPRESENTATIVE KEYSER said that he can see where the Department of Institutions is coming from and he can see how the warden feels, but that it just makes sense that the prison is where this should take place - this man is in prison; he is there; they are talking about taking a very dangerous criminal, transporting him clear across the state of Montana back to the county in which he was tried, etc., and then somebody there has to take the responsibility of this and this could have a reflection on the sheriff and the prisoners he has.

REPRESENTATIVE JENSEN noted that Mr. Chisholm's comment was that it should take place at the prison, but the question was if the local sheriff should supervise it at the prison and thereby relieve the warden and the internal administrators of that problem.

REPRESENTATIVE DARKO said the thing that bothers her is there are two options and she felt that if they are looking for a human way to do this, why leave hanging in the law.

REPRESENTATIVE DAILY indicated that he felt just the opposite of Mr. Chisholm, i.e., that if they were to execute

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a prisoner or two at the Montana State Prison, then maybe again the warden and guards could start running the prison and the prisoners might have a little more respect for the warden, especially if he pulled the rope.

REPRESENTATIVE BERGENE stated that she felt the volume of the prison population would make that difference between the sheriff setting up the execution in the prison as opposed to him and that would make a little difference.

REPRESENTATIVE JENSEN commented that, as he recalls, there is no gallows at the prison; that they can't hang somebody down there. REPRESENTATIVE KEYSER noted that there were tourist gallows.

REPRESENTATIVE HANNAH indicated that in Yellowstone County they put gallows up, they take them down and there is a lot of wasted man hours there and there was a waste of time of the volunteer group who built the gallows. He felt sure that they would have citizens in Deer Lodge, who would be more than happy to volunteer their time and material to do the same; and would save counties around the state the expense and hassle of finding other concerned citizens to do that.

REPRESENTATIVE ADDY affirmed that this was the right location to do this, if it has to be done; in 1952, the last prisoner was sentenced to death; he was subsequently retried in Havre; there was a great debate over where they were going to have the hanging; and they did not want to stigmatize any place where people had picnics or other events. He said that he has problems with the bill just because it gives a more human alternative to capital punishment; he would hate for them to be desensitized to the fact that they are discussing putting someone to death; that he would like to maintain hanging as one of the alternatives that the state will adopt unless the prisoner chooses another alternative; he has some problems with the bill, but he thought he could vote for it.

REPRESENTATIVE CURTISS commented that if the sheriff is required to do this, he is going to have to live with that for a long time; and the people in the smaller communities are not going to forget that either. She felt that the state prison is the place for it and is as impersonal as it can be.

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REPRESENTATIVE EUDAILY indicated that he had a problem with the bill on page 8, lines 15 through 17, wherein it authorizes a pharmacist to dispense such drugs to the warden, without prescription; he did not understand, if a doctor is available to the prison, why they would not have the doctor prescribe these drugs; he thought that there might be a problem where the designee might be getting getting these drugs for use for something else.

CHAIRMAN BROWN thought this relates to the oath that doctors take.

REPRESENTATIVE IVERSON noted that the type of drugs you are talking about here are not the type that people would buy for dispensing for sale in the prison as these are fast-acting lethal drugs.

REPRESENTATIVE EUDAILY said that he was sure in the codes, there is a section that says a pharmacist must have a prescription to issue drugs and he wondered if they amended that section. MS. DESMOND said that she thinks he is right and she will try to find that section.

REPRESENTATIVE DARKO commented that they had a bill in Human Services Committee that would allow the Humane Society to administer a drug without the veterinarian's O.K. and it was killed on that very same reason in the Senate.

REPRESENTATIVE JAN BROWN indicated that the injection itself concerns her; if she had to administer an I.V., she would not like to think of herself as an executioner; and on T.V., they had two solutions running in and they had two people dumping the components in so neither knew who administered the actual lethal dosage.

REPRESENTATIVE JENSEN noted that there could be medical problems with a lethal injection, i.e. if someone is resisting the injection by muscle contraction, this presents some problem as it does make it difficult to administer.

CHAIRMAN BROWN felt this was no great problem. He suggested that they leave this bill for awhile to allow Ms Desmond to check out the problem on the pharmacist.

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the people could call up thinking that the judge doesn't know me and he will buy this excuse and get excused that way where if they are known to the jury commissioner, they could be stricter.

REPRESENTATIVE KEYSER thought that the language says that this has to be done with the consent of the judge; that is the way they do it now; he advised that he had a bill four years ago to try and toughen the jury exemptions so people could not be exempted so easily (he thought it passed one House and not the other); it was a very extensive bill; then to come in with this bill that deals with another issue and try to get in with as complex a bill as that bill was that this just wouldn't work.

REPRESENTATIVE ADDY commented that he agreed with Representative Farris.

CHAIRMAN BROWN indicated that they would hold this and work on the amendments.

SENATE BILL 394

MS. DESMOND indicated that she found this section and she was not certain which schedule this drug was in - either 2 or 3 - but they could put language in saying, "except as provided in this act, no dangerous drug in which-ever schedule could be dispensed without a prescription". She commented that as it stands now a pharmacist could refuse to issue the drug.

REPRESENTATIVE EUDAILY moved that they amend this bill appropriately to cover this matter. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE SEIFERT seconded the motion.

The motion carried with REPRESENTATIVE JENSEN, REPRESENTATIVE DARKO, REPRESENTATIVE VELEBER and REPRESENTATIVE BERGENE voting no.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 394

DATE March 16, 1983

SPONSOR SENATOR B. BROWN

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit A
3/16/83
SB 394

SENATE BILL NO. 394

TESTIMONY OF JOHN H. MAYNARD,

ASSISTANT ATTORNEY GENERAL

Senate Bill 394 provides an alternative method of execution to hanging by providing for lethal injection at the election of the defendant. The bill goes on to provide that the place of execution is the State Prison, as opposed to what is currently the law, the county in which the defendant was convicted. Finally, the bill provides for retroactive application and an immediate effective date. SB 394 is based on the similar laws in Oklahoma, Texas, New Mexico, Idaho, Washington, Massachusetts, and Utah.

Montana is one of only two states that retains hanging as its exclusive method of execution. While hanging was the predominant form of execution in the United States in the 19th century, it has been supplanted over the years by electrocution, the gas chamber and by lethal injection. Because Montana is one of the last states to retain hanging, the issue has arisen in our capital cases of whether hanging constitutes cruel and unusual punishment. A recent Washington case, State v. Frampton, 627 P.2d 922 (1981),

details the evidence that opponents of hanging have presented in support of their claim that hanging does violate the constitutional prohibition against cruel and unusual punishment. Passage of Senate Bill 394 would effectively eliminate that issue from Montana's three capital punishment cases, thereby obviating the need for an evidentiary hearing on the issue by any of the courts that may be presented with that claim. Senate Bill 394 also eliminates the security risks that accompany the transporting of a death row inmate from the state prison to the county in which he was convicted. Executions which take place in counties present local facility security risks in addition to the transportation risks. Finally, SB 394 concentrates any expertise in terms of conducting executions and eliminates the possibility of any political exploitation of a sensitive issue.

A number of common objections raised to provisions like those contained in Senate Bill 394 do not on balance, outweigh the reasons to pass the bill. Some have argued that the place of execution should be near the place at which the crime was committed. However, this is not the case under current law. Each of Montana's death row inmates were tried in counties other than the counties in which they committed their crimes. Another objection that has been raised is that conducting an execution at the prison would create security risks and necessarily involve prison personnel.

The fact is that the prison is probably the most secure site within the state and that any persons involved in the conducting of the execution would remain anonymous.

Another objection to changing the method of execution at this time is that it might raise an ex post facto issue in current cases, thereby extending what has already been a very lengthy process. However, when balanced against the possibility of an evidentiary hearing being granted on the issue of whether hanging constitutes cruel and unusual punishment, any claim regarding lethal injection that might be raised could be handled very expeditiously. Significant authority has upheld its constitutionality and its applicability to persons originally sentenced, particularly in the state of Texas prior to its adoption as a form of execution in that state. Ex parte Granviel, 561 SW.2d 503 (1978); Dobbert v. Florida, 432 U.S. 282 (1977). Finally, objections have been raised by physicians because of their inability, by virtue of the hippocratic oath, to participate in an execution by lethal injection. However, other persons are qualified and trained in Montana and in other parts of the country to give intravenous injections. That list of people would include persons who have served as medics in the service, emergency medical technicians, and para medics in the State of California. Others could and have been trained. The number of persons who could administer a

lethal injection should also be considered against the number of persons who have participated in or conducted hangings. The claim is made in Montana's cases that there are no experienced hangmen in this country at all. For the foregoing reasons, adopting this form of execution and this place of execution in Montana are important.

MINUTES OF THE JUDICIARY COMMITTEE
March 21, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 203

SENATOR TOWE, District 34, Billings, explained that this bill has been heard by the committee previously because they had Judge Wilson here, who testified on a companion bill that Representative Addy carried. He said that this bill addresses the question of the use of judicial talent after a judge has retired by providing that a judge or justice who has retired after eight years of service may assist the supreme court, a district court, or a water court upon request of the supreme court.

There were no proponents and no opponents.

SENATOR TOWE closed.

REPRESENTATIVE KEYSER asked why they had this eight years instead of twelve years. SENATOR TOWE responded that he was not on the committee that made that choice; if a judge had been elected twice and then retired and stepped down, most likely that judge would step down before the end of that 12 years because of a medical disability or for an age reason; if he decided not to run again or if he was defeated, then he would almost always have the twelve years.

REPRESENTATIVE KEYSER noted that it doesn't say anything about a second term - it just says eight years. SENATOR TOWE replied that that is obvious, i.e., if you are appointed you have to be elected in the next election; if elected the second time, that is usually going to be less than eight years total service; if you are elected once, you serve six years and elected a second time, you are going to have a twelve-year term; you have got to be elected twice under the eight-year term; and he felt that this was the thinking of the committee.

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EXECUTIVE SESSION

SENATE BILL 394

CHAIRMAN BROWN passed out to the committee copies of a letter received from Curt Chisholm, Deputy Director of the Department of Institutions. See EXHIBIT B. He indicated that this bill was passed out of here, but he has not signed the Standing Committee Report because of this letter.

REPRESENTATIVE DAILY moved that they reconsider the action taken on this bill. REPRESENTATIVE FARRIS seconded the motion. The motion carried unanimously.

REPRESENTATIVE SPAETH moved that this bill BE CONCURRED IN. REPRESENTATIVE KEYSER seconded the motion.

REPRESENTATIVE DAILY moved that on page 8, that lines 15, 16 and 17 be stricken in their entirety. The motion was seconded by REPRESENTATIVE CURTISS.

CHAIRMAN BROWN requested Curt Chisholm to explain this a little further. MR. CHISHOLM explained the problems and then noted that if they get a license, which the Drug Enforcement Administration said they would give them if they applied for it, they would be able to do this; but they said not to tamper with the Pharmacy Practices Act; they can order these drugs directly from the manufacturer and they can keep it on hand in the event they ever need it.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE CURTISS seconded the motion. The motion carried with REPRESENTATIVE DARKO and REPRESENTATIVE VELEBER voting no.

SENATE BILL 203

REPRESENTATIVE ADDY moved that this bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

STANDING COMMITTEE REPORT

..... March 21 19 83

MR. **SPEAKER :**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **394**

third reading copy (blue)
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"AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTIONS AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **SENATE** Bill No. **394**

BE AMENDED AS FOLLOWS:

1. Page 3, following line 14.
Strike: Subsection (6) in its entirety.

AND AS AMENDED
BE CONCURRED IN

XXXXX
XXXXXXXXXX
DO PASS

SENATE BILL NO. 394

INTRODUCED BY B. BROWN, HALLIGAN, FULLER,

CHRISTIAENS, BERG, TURNAGE, CRIPPEN,

MAZUREK, CURTISS, KEMMIS, KEYSER,

RAMIREZ, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTION; AND EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; ~~PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1)

This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States

veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20; and

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

~~(o) the execution of a death sentence pursuant to~~

~~46-12-103.~~

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions -- limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any

1 legally qualified nurse of another state whose engagement
 2 requires the nurse to accompany and care for a patient
 3 temporarily residing in this state during the period of one
 4 such engagement not to exceed 6 months in length, provided
 5 that person does not represent or hold herself or himself
 6 out to be a nurse licensed to practice in this state;

7 (f) the practice of any legally qualified nurse of
 8 another state who is employed by the United States
 9 government or any bureau, division, or agency thereof while
 10 in the discharge of that nurse's official duties;

11 (g) nursing or care of the sick, with or without
 12 compensation, when done in connection with the practice of
 13 the religious tenets of any well-established religion or
 14 denomination by adherents thereof;

15 (h) nursing or care of a minor who is in the care of a
 16 licensed foster parent, to the same extent such care may be
 17 provided by a parent or guardian; and

18 ~~(i) the execution of a death sentence pursuant to~~
 19 ~~46-19-103.~~

20 (2) This chapter may not be construed as conferring
 21 any authority to practice medicine, surgery, or any
 22 combination thereof; to confer any authority to practice any
 23 of the healing arts prescribed by law to be practiced in the
 24 state of Montana; or to permit any person to undertake the
 25 treatment of disease by any of the methods employed in those

1 arts unless the licensee has been qualified under the
 2 applicable law or laws licensing the practice of those
 3 professions or healing arts in the state of Montana."

4 Section 3. Section 45-3-109, MCA, is amended to read:

5 "45-3-109. Execution of death sentence. A public
 6 ~~servant--who-in-the-exercise-of-his-official-duty~~ person who
 7 puts a person to death pursuant to a sentence of a court of
 8 competent jurisdiction is justified if he acts in accordance
 9 with the sentence pronounced and the law prescribing the
 10 procedure for execution of a death sentence."

11 Section 4. Section 46-19-103, MCA, is amended to read:

12 "46-19-103. Execution of death ~~sentence~~. (1) In
 13 pronouncing the sentence of death, the court shall set the
 14 date of execution which must not be less than 30 days or
 15 more than 60 days from the date the sentence is pronounced.
 16 If execution has been stayed by any court and the date set
 17 for execution has passed prior to dissolution of the stay,
 18 the court in which the defendant was previously sentenced
 19 shall, upon dissolution of the stay, set a new date of
 20 execution for not less than 5 or more than 90 days from the
 21 day the date is set. The defendant is entitled to be present
 22 in court on the day the new date of execution is set.

23 (2) The punishment of death must be inflicted by
 24 hanging the defendant by the neck until he is dead ~~or~~ at
 25 ~~the election of the defendant, by administration of a~~

1 ~~continuous intravenous injection of a lethal quantity of an~~
 2 ~~ultra-fast-acting barbiturate in combination with a chemical~~
 3 ~~paralytic agent until a licensed physician pronounces that~~
 4 ~~THE defendant is dead according to accepted standards of~~
 5 ~~medical practice.~~

6 (3) ~~A sentence of death must be executed within the~~
 7 ~~walls or yard of a jail or some convenient private place in~~
 8 ~~the county where the trial took place. The warden of the~~
 9 ~~Montana state prison shall provide a suitable and efficient~~
 10 ~~room or place in which executions will be carried out,~~
 11 ~~enclosed from public view, within the walls of the state~~
 12 ~~prison, and shall provide all implements necessary to the~~
 13 ~~execution. The warden shall, subject to subsection (4),~~
 14 ~~select the person to perform the execution and the warden or~~
 15 ~~his designee shall supervise the execution.~~

16 (4) ~~The sheriff of the county must be present and~~
 17 ~~shall supervise such execution which shall be conducted in~~
 18 ~~the presence of a physician, the county attorney of the~~
 19 ~~county, and at least 12 reputable citizens to be selected by~~
 20 ~~the sheriff. The sheriff shall, at the request of the~~
 21 ~~defendant, permit such priests or ministers, not exceeding~~
 22 ~~two, as the defendant may name and only persons, relatives,~~
 23 ~~or friends, not to exceed five, to be present at the~~
 24 ~~execution together with such peace officers as he may think~~
 25 ~~expedient to witness the execution. No other persons than~~

1 ~~those mentioned in this subsection can be present at the~~
 2 ~~execution, nor can any person under age be allowed to~~
 3 ~~witness the same. An execution carried out by lethal~~
 4 ~~injection must be performed by a person selected by the~~
 5 ~~warden and trained to administer the injection. The person~~
 6 ~~administering the injection need not be a physician,~~
 7 ~~registered nurse, or licensed practical nurse licensed or~~
 8 ~~registered under the laws of this or any other state. The~~
 9 ~~warden must allow the execution to be observed by 12~~
 10 ~~witnesses, 3 of whom may be designated by the person to be~~
 11 ~~executed.~~

12 (5) After the execution, the sheriff must warden shall
 13 make a return upon the death warrant showing time, mode, and
 14 manner in which it was executed.

15 ~~(6) A pharmacist may dispense to the warden or his~~
 16 ~~designee, without prescription, such drugs as are needed to~~
 17 ~~carry out an execution by lethal injection."~~

18 Section 5. Section 46-19-202, MCA, is amended to read:

19 "46-19-202. Proceedings following determination
 20 regarding fitness. (1) If it is found that defendant is
 21 mentally fit as provided in 46-19-201, the sheriff must
 22 warden of the Montana state prison shall execute the
 23 judgment.

24 (2) If it is found that he lacks fitness, the
 25 execution of judgment must be suspended and the court shall

1 commit him to the custody of the superintendent of Warm
2 Springs state hospital to be placed in an appropriate
3 institution of the department of institutions for so long as
4 the lack of fitness endures.

5 (3) When the court, on its own motion or upon
6 application of the superintendent of Warm Springs state
7 hospital, the county prosecuting officer, or the defendant
8 or his legal representative, determines after a hearing, if
9 a hearing is requested, that the defendant has regained
10 fitness to proceed, the ~~sheriff--shall~~ warden must be
11 directed by the court to carry out the execution. If,
12 however, the court is of the view that so much time has
13 elapsed since the commitment of the defendant that it would
14 be unjust to proceed with execution of the sentence, the
15 court may suspend the execution of the sentence and may
16 order the defendant to be discharged."

17 Section 6. Section 46-19-204, MCA, is amended to read:

18 "46-19-204. Proceedings following determination
19 regarding pregnancy. If it is found by the inquiry that the
20 woman is not pregnant, the ~~sheriff--must~~ warden of the
21 Montana state prison shall execute the judgment. If it is
22 found that the woman is pregnant, the ~~sheriff--must~~ warden
23 shall suspend the execution of judgment and transmit the
24 inquisition to the governor. When the governor is satisfied
25 that the woman is no longer pregnant, he may issue his

1 warrant appointing a day for the execution of the judgment."

2 SECTION 7. APPLICABILITY. THIS ACT APPLIES TO DEATH
3 SENTENCES WHETHER FIRST PRONOUNCED BEFORE OR AFTER ITS
4 EFFECTIVE DATE. THE LEGISLATURE INTENDS THIS ACT TO APPLY
5 RETROACTIVELY UNDER 1-2-109.

6 SECTION 8. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
7 PASSAGE AND APPROVAL.

-End-